

BLACK BEAR MINES CO., ET AL.
CAPITOL SILVER MINES, INC., ET AL.
MARY ANN MINING CO., ET AL.

IBLA 99-4, 99-35, and 99-53

Decided June 29, 2000

Appeals from decisions of the Idaho and Montana State Offices, Bureau of Land Management, rejecting small miner waiver certificates filed by 45 corporations because the corporations were deemed related due to common directors and officers and therefore held in aggregate more than 10 unpatented mining claims, and declaring 385 mining claims forfeited by operation of law upon failure to pay maintenance fees.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before Aug. 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof. Where the claimant does not qualify for a waiver and did not pay the claim maintenance fee, BLM properly declares the claims forfeited and void.

2. Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Prior to the assessment year for which a maintenance fee waiver is sought, a claimant must certify that it and related parties do not hold in aggregate more than 10 claims. Under 30 U.S.C. § 28f(d)

(1994), a party is deemed related where it controls, is controlled by, or is under common control with the claimant. Where a company has a majority of directors or officers who are also the majority of directors or officers of another company, the two are related under the statute. If their claims in aggregate exceed 10, they cannot individually qualify for the waiver.

APPEARANCES: John F. Magnuson, Esq., Coeur d'Alene, Idaho, for appellants; Martha Allen Godin, Esq., Karen Hawbecker, Esq., and Peter J. Schaumberg, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

We have, pursuant to a jointly filed motion filed by the several appellants, consolidated appeals from two decisions of the Idaho State Office, Bureau of Land Management (BLM), dated August 28 and September 16, 1998, respectively, and a decision of the Montana State Office, BLM, dated October 15, 1998, declaring certain mining claims forfeited by operation of law for failure to pay maintenance fees because the claimants, all corporations, did not qualify under the small miner exemption from payment of the \$100 per claim maintenance fee required by section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993 (the Maintenance Fee Act), 30 U.S.C. § 28f (1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and 3833.1-7. Thirty-nine corporations have appealed from the August 28, 1998, decision, two corporations have appealed from the September 16, 1998, decision, and four corporations have appealed from the October 15, 1998, decision.

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1/ The claimants in IBLA 99-4, and the respective mining claims at issue, are as follows:

<u>Company name</u>	<u>Number of claims and IMC Numbers</u>
Black Bear Mines Co.	2 29148-29149.
Boulder Creek Mining Co.	10 20933-20934, 20937-20941, 20953-20955.
Burke Mining Co.	10 28781-28787, 28789-28790, 28797.
Coeur d'Alene Crescent Mining Co.	1 23188.
Coeur d'Alene Premier Mining Co.	10 21040-21043, 21048-21049, 21073-21076.
Constitution Mining Co.	10 30274-30275, 30278, 30304-30305, 30308-30311, 30317.
Croesus Gold Mining Co.	10 177876-177885.
East Coeur d'Alene Silver Mines, Inc.	10 23205-23207, 23210-23211, 23214, 23217-23218, 23221, 23224.
Flojodo Mines, Inc.	10 24763-24764, 24767-24768, 24771, 24795-24797, 24803, 24805.

[1] At issue in all three cases is the mandatory mining claim maintenance fee and its waiver option. Congress has provided in 30 U.S.C. § 28f(a), supra, that the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998.

fn. 1 (continued)

Gem State Silver, Inc.	10	29850-29851, 29853-29856, 29858-29859, 29863, 106495.
Gold Run Gulch Mines, Inc.		7 29642-29648.
Granada Lead Mines, Inc.		9 25582-25590.
Highland Surprise	10	21779-21781, 21788, 21797-
Consolidated Mining Co.		21798, 21805, 21811, 21814, 21835.
Hunter Mining Co.	3	177829-177831.
Hypothek Mining & Milling Co.		4 21242-21245.
Idaho Willow Creek Mining Co.		10 27403-27411, 27413.
Keystone Silver Mines, Inc.		8 177667-177674.
Lake Gulch Silver Mines		9 29455-29463.
Midas Gold Corp.	10	177633-177636, 177886-177891.
Moon Gulch Mines, Inc.		10 21552-21555, 21557-21558, 21560-21563.
Mullan Metals, Inc.	10	24653-24662.
National Silver-Lead Mining Co.		9 20874-20875, 20877, 20885- 20886, 20893, 20896, 20901, 20903.
Park Copper & Gold Mining Co.		2 29017-29018.
Pioneer Mines Inc.	10	21252, 21256-21258, 21386- 21391.
Princeton Mining Co.	10	27617-27622, 27641-27644.
Reindeer-Queen Mining Co.		7 29728-29734.
Sentinel Silver Mines, Inc.		10 28743-28749, 28752-28754.
Silver Belt Mines, Inc.	10	21419-21421, 21428-21430, 21441-21443, 21449.
Silver Eagle Mining Co.		6 63284-63287, 89326, 89490.
Silver Fortune Mines, Inc.		10 29823-29824, 29827-29831, 29836-29838.
Silver Ridge Mining Co.		10 177730-177739.
Silver Verde May Mining Co.		6 72594-72599.
South Atlas Mines, Inc.		10 22617-22618, 22623-22624, 22629-22630, 22635-22636, 22641-22642.
South Butte Mines, Inc.		10 22310-22319.
Square Deal Mining	3	23103-23105.
& Milling Co., Ltd.		
Stevens Peak Mines, Inc.		10 25890-25893, 25898-25903.
Superior Silver Mines, Inc.		9 36707-36715.
Toledo Mining Co.	10	21224-21226, 21230-21234, 21236, 39641.
Western Silver-Lead Mining Co.		10 22298-22299, 22303-22306, 100370, 161871-161873.

Accord, 43 C.F.R. § 3833.1-5. Failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994); 43 C.F.R. § 3833.4. Congress granted the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and certifies performance of the assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994); accord, 43 C.F.R. § 3833.1-6. However, if a claimant owns more than 10 claims, none of the claims qualifies for the waiver. BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * *" with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-7(d)(2).

According to the record, each of the 39 corporate claimants appealing from the August 28 decision filed a waiver certificate for the 1998 assessment year on or before August 31, 1997. 2/ The 2 claimants appealing from the September 16 decision both filed waiver certificates for the 1999 assessment year on August 31, 1998. The four claimants appealing from the October 15 decision each filed waiver certificates every year from 1994 through 1998. In determining that each company was ineligible for the small miner waiver, BLM found in all three decisions that each corporate claimant had directors and officers in common with other companies owning mining claims and the aggregate number of claims attributed to the related companies exceeded 10.

BLM explains that "during a file review, [the Idaho State Office] noticed that fifty-one companies holding more than 700 unpatented mining claims shared a common mailing address (P.O. Box 469, Wallace, ID 83873) and appeared to have common officers and/or directors." (Joint Answer at 5.) It therefore requested information concerning the companies'

fn. 1 (continued)

In IBLA 99-35, Capitol Silver Mines, Inc., appeals the decision with respect to the 10 mining claims it holds, IMC 25360-IMC 25363, IMC 25379, IMC 25391, and IMC 25409-IMC 25412, and Idaho-Montana Silver, Inc., appeals with respect to 10 mining claims it holds, IMC 180803-IMC 180812.

The third appeal, IBLA 99-53, involves the following:

<u>Company name</u>	<u>MMC Numbers (10 claims each)</u>
Mary Ann Mining Co.	37264-37265, 37296-37297, 37299, 37348-37350, 37353-37354.
Sloway Silver Mines, Inc.	37530-37532, 37548-37551, 37553, 37555, 37557.
Evergreen Minerals, Inc.	94400-94409.
Amazon-Dixie Mining Co.	99404-99405, 99407-99408, 99419- 99420, 99433, 99435-99436, 99443.

2/ In all 3 cases, the waiver certificates were signed and filed on behalf of the individual companies (all 45) by Donald Springer, as agent.

articles of incorporation, officers, and directors. BLM charted the information received and determined that 50 of the 51 companies shared common corporate officers and directors. See Table 1, attached as Appendix A. Eleven of the 50 companies, however, had paid maintenance fees for all their claims, but the remaining 39 had not. As a result, BLM issued the August 28 decision. Of the 11 companies paying fees in 1997, 2 submitted waiver certificates in 1998. Applying the information gathered earlier to these two companies, BLM issued its September 16 decision. Taking note of the Idaho State Office's action, the Montana State Office determined that several corporations holding mining claims in Montana utilized some of the same directors and officers involved in the 50 companies reviewed by the Idaho State Office, and therefore issued its October 15 decision.

In a combined statement of reasons, appellants aver that they are separate and unrelated entities, organized under dissociated articles of incorporation and operating independently under the laws of the State of Idaho. Appellants explain that BLM's observed common thread, H.F. Magnuson and Company, is a certified public accounting and services firm which has provided the following professional assistance to small mining companies for over 50 years: Stock transfer, shareholder list maintenance, accounting, bookkeeping, claim maintenance, claim filings, subcontracting for geological services, registered agent services, directorship, and serving as company officer. Appellants maintain that access to these services is essential in an area where such expertise is limited. Appellants further assert that neither H.F. Magnuson nor H.F. Magnuson and Company owns shares in most of these companies and, where they do, they own minimal amounts which in nowise would give them voting control therein. Appellants advise that Idaho State law allows cross-board membership and argue that the legal and actual control of a corporation rests with the shareholders, suggesting that neither H.F. Magnuson nor H.F. Magnuson and Company is capable of legally or actually controlling all these companies together.

Appellants assail the regulations employed by BLM, 43 C.F.R. § 3833.0-5(x) and (y), as vague and overbroad, arguing that they serve no rational basis when applied to this situation. Appellants contend that under the rules of statutory construction the definition in § 3833.0-5(y) must be construed to provide that "actual control and legal control and power to control" must all be present before BLM may conclude parties are related, a situation which cannot happen, they claim, with diverse shareholders holding legal and actual control. Appellants assert that these regulations are unconstitutional inasmuch as they violate the principles of right of association, due process, and equal protection.

In its response, BLM refutes appellants' notion that all three elements of control must be present for parties to be related, arguing that appellants have misapplied the rules of statutory construction. BLM explains that the debated regulations do not establish a definition of "control" but merely implement the statutory definitions found in 30 U.S.C. § 28f(d) (1994), noting that the specific statutory language at issue reads: "the term control includes actual control, legal control, and the

power to exercise control." BLM argues that the term "includes" is a term of enlargement, suggesting that if any of the three specified examples of control or any other type of control is found to independently exist, then control is present. BLM discusses two Board decisions which, it argues, supports its actions here. BLM notes the plurality's declaration in 3MRC-Co., 146 IBLA 6, 11 (1998): "Being an officer or director of a corporation would also be sufficient to raise a rebuttable presumption of control." BLM notes that the Board in Silver Crystal Mines, 147 IBLA 146, 152 (1999), concluded that the "[p]resident of Silver Crystal [also serving as president of another corporation holding mining claims] would be a 'related party' as would other corporations of which [he] is an officer." Reviewing the statistics it gathered, BLM contends that a presumption of control was raised which appellants have not rebutted.

[2] As noted, Congress in subsection 1 of 30 U.S.C. § 28f(d), supra, grants the Department authority to waive the claim maintenance fee for a claimant who certifies that "the claimant and all related parties * * * held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands." (Emphasis added.) In subsection 2 of § 28f(d), supra, Congress expressly catalogs those "related" groups unable to avail themselves of the waiver:

For purposes of paragraph (1), with respect to any claimant, the term "related party" means--

(A) the spouse and dependent children (as defined in section 152 of Title 26) of the claimant;
and

(B) a person who controls, is controlled by, or is under common control with the claimant,

For purpose of this section, the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means."

The regulatory implementation of this statute is 43 C.F.R. § 3833.0-5(x) and (y):

(x) *Related party* means:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

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Editor's note: Page "152 IBLA 392" was duplicated as 393. The duplication has been eliminated.

152 IBLA 393

(y) *Control* means, as defined in the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

So far, the Board's opportunity to review BLM's application thereof has been limited. In Richard W. Cahoon Family Limited Partnership, 139 IBLA 323 (1997), the Board's review focused on a partnership. We concluded that the term "related parties," as set forth in the statute, may include partners who can exercise "control" or who are "under common control with" a person who holds the right to transfer the claim. Id. at 326. In Silver Crystal Mines, supra, we reviewed mining claims held void for failure to pay rental fees in 1993 and maintenance fees in 1995. We held that neither the statute imposing rental fees nor its implementing regulations provided a basis for imputing to the corporation ownership of claims owned by an officer of the corporation as an individual. We reversed BLM's decision to the extent that it had determined that the corporation was imputed to have an interest in an officer's personal claims based on the rental fee statute and regulations. Id. at 151. The Board therefore remanded the maintenance fees issue to determine the corporation's eligibility for a waiver of the maintenance fees on the day due in 1995, based on the fact that BLM's reference to the officer's relationship with another corporation was dependent on several mining claims held by those companies which had been voided in 1993. Id. at 152. Hence, the extent to which corporations are held responsible for other corporations' mining claims because they have corporate officers in common was insinuated but not expressly addressed.

BLM relies on the rationale in 3MRC-Co., supra, as supportive of its position. Therein, we construed the notion of control as follows:

In our view, it would not be reasonable to interpret "have an interest in these entities" in 43 C.F.R. 3833.1-6(a)(3) as tantamount to having any interest. Nor does it appear from the responses to the comments that BLM intended such a broad application. Although the responses may not be fully consonant, it appears BLM intended that a corporation could hold 10 or fewer claims and an individual stockholder of that corporation could hold 10 or fewer claims and both could qualify for an exemption so long as the individual stockholder did not "control" the corporation. This is how we understand the responses that "any person who owns stock in a mining corporation which holds claims" is "separately eligible for the small miner exemption" (comment one above) if the person is a stockholder "without control" (comment two). "The clear intent of the Act was to exempt all claimants, including corporations, holding 10 claims or fewer" (comment two). In a different

context, BLM responded to a comment questioning "whether a person who is part of a corporation * * * that qualifies for a 10-claim exemption can also qualify for an additional small miner exemption under his or her own name" with the answer "yes if the person is a non-controlling shareholder of a corporation." 58 Fed. Reg. 38186, 38193 (July 15, 1993).

Id. at 10. However, our review was based on the regulation then in effect, 43 C.F.R. § 3833.1-6(a)(3) (1993), which read: "Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation shall be counted toward the 10-claim limit for claimants that have an interest in these entities." As noted in 3MRC-Co., supra at 10-11, and again in Silver Crystal Mines, supra at 150, the policy applied was regulatory, and not statutory, and the Board looked to the Department's rulemaking to determine the effects and extent of "control" and whether statutory purposes had been satisfied. Nevertheless, the Board opined in 3MRC-Co., supra at 11, that on the basis of the regulation: "Being an officer or director of a corporation would also be sufficient to raise a rebuttable presumption of control."

When Congress established the payment of maintenance fees in lieu of its previous experiment with rental fees, it knowingly chose to grant the Secretary of the Interior the discretionary authority to provide for the waiver of required maintenance fees for those holding 10 or fewer claims if he deemed such a waiver desirable. See Alamo Ranch Co., 135 IBLA 61, 75 (1996); see also Goldie James, 143 IBLA 289, 292-93 (1998). Thus, the Department's authority with respect to waivers is constrained only by such express limitations as are found in the legislative grant. We find that one of the essential differences between the maintenance fee statute and the rental fee legislation which it replaced is that Congress expressly provided that, with respect to determining related parties, "the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, * * *." 30 U.S.C. § 28f(d)(2). The circumstances of each situation must be evaluated to determine if the common directors or officers exercise control. The statutory language reinforces our determination in 3MRC-Co., that common directors or officers raise a rebuttable presumption of control. However, control may be demonstrated where there are a majority of common directors or officers. Accordingly, where such commonality is found, the parties must be deemed related.

In their notice of appeal, appellants maintain that "[a]ny inference or presumption of control on the part of H.F. Magnuson & Company, or the directors of the subject Appellants, over the affairs of the Appellants is factually unsupported." (Notice of Appeal at 9.) Further, they state that "[t]here is no combination, alliance, affiliation, or other relationship by the Appellants by which their affairs and operations are commonly controlled by H.F. Magnuson & Company or its employees." Id. We conclude that the inverse is true.

In the process of determining whether the appellants herein are "related" under the terms of 30 U.S.C. § 28f(d)(1994) and 43 C.F.R. § 3833.0-5(x) and (y), BLM requested copies of each company's Articles of Incorporation. Included in the administrative record submitted to the Board by BLM is an "Analysis of Articles of Incorporation" which provides, for each company, the names of the company's directors and officers, as well as a brief description of the directors' powers. Even a cursory review of this analysis would lead us to conclude that the appellants are "related" under the statute and regulation.

Using for example the Articles of Incorporation for Black Bear Mines Company (Black Bear), the first company listed, we see that its directors are H.F. Magnuson, R.M. MacPhee, and W. Featherstone; the officers are W. Featherstone and R.M. MacPhee; and the "Directors Powers" are described as the authority "to do * * * all things necessary * * * which may in the judgement of its * * * officers further the interest of said corporation." The stated purposes of the corporation are, inter alia, "[t]o locate, acquire, hold, lease, bond, buy, sell, secure options upon, mortgage and otherwise deal in and dispose of mines and mining claims; to hold, work, develop, mine and extract minerals and ores from mines and mining claims." The next company analyzed is Boulder Creek Mining Company (Boulder Creek), whose directors are H.F. Magnuson, R.M. MacPhee, and D. Lavigne, whose officers are H.F. Magnuson and R.M. MacPhee, with its Articles of Incorporation providing that "[t]he corporate powers of the corporation shall be vested in a Board of Directors." The stated objects and purposes for which Boulder Creek was formed are, inter alia, "[t]o purchase, sell, option, own, locate, lease, or otherwise acquire, mortgage and dispose of lands, mines, claims, and mineral rights; * * * to use and to own, enter, apply for patents for mines, millsites, mills, water-rights, tunnels, and rights-of-way." BLM's analysis shows that the pattern established with these first two examples carries throughout.

As will be seen below, there is no escaping the conclusion offered by counsel for BLM that "[t]he forty-five petitioner companies are saturated with the same seven individuals: H.F. Magnuson, R.M. MacPhee, H. James Magnuson, Thomas R. Magnuson, Wray Featherstone, Dale Lavigne, and William Zanetti." (Answer at 20.) Moreover, given that the directors and officers of the appellant companies are invariably vested by their respective Articles of Incorporation with the authority to exercise the corporate powers of the corporations, we conclude that the companies are "related" pursuant to 30 U.S.C. § 28f(d). We agree with the analysis provided by counsel for BLM:

In their Joint Supplemental Statement, petitioners emphasize the large and diverse nature of the stockholders in these forty-five companies. * * * However, they do not suggest that these thousands of stockholders exercise day-to-day control over these companies. Nor do they suggest that the officers and directors of these forty-five companies are powerless figureheads. In short, petitioners have done nothing to rebut the presumption of common actual control and common power to exercise control evidenced by the interlocking, overlapping

boards of directors and officers of these forty-five mining companies. Therefore, BLM's decisions finding these companies to be related parties and invalidating their small miner fee waiver certifications should be affirmed.

(Joint Answer at 24.)

Appellants focus on the language defining control, and query what magic number of directors or officers must exist in common between two companies before the statute is applicable (noting that the statute refers to them in the plural and not the singular). We find that the logic of this argument has no basis in the circumstances here, as explained by BLM:

The forty-five petitioner companies are saturated with the same seven individuals: H.F. Magnuson, R.M. MacPhee, H. James Magnuson, Thomas R. Magnuson, Wray Featherstone, Dale Lavigne, and William Zanetti. *
* *

R.M. MacPhee and H.F. Magnuson are both directors of 80% (thirty-six of forty-five) of the companies in these decisions. * * * An additional seven companies include either R.M. MacPhee or H.F. Magnuson on their board of directors. Therefore, R.M. MacPhee and H.F. Magnuson are involved as directors in 95.5% (forty-three) of forty-five of petitioner companies. [Footnote: Only two of the 45 companies do not include either R.M. MacPhee or H.F. Magnuson on their board of directors. However, each of those two companies includes one of the other five individuals.] Most of the companies also include at least one of the other five individuals on their boards. For example, Dale Lavigne is a director of sixteen companies; H. James Magnuson is a director of twenty.

* * * In fact, twenty-one of the companies have boards composed entirely of some combination of these seven persons and no other individuals. * * * These same individuals represent 75% or more of the directors of fourteen additional companies and more than 50% of the directors of another four companies.

These same individuals are also officers in all of the companies. In thirty of the companies (66.6%), H.F. Magnuson holds the office of President and R.M. MacPhee is the Secretary. [Footnote: H.F. Magnuson and R.M. MacPhee are officers together in thirty-two of the forty-five companies.] * * * Either H.F. Magnuson or R.M. MacPhee is an officer in all but one of the forty-five petitioner companies. H. James Magnuson is the President of that company.

(Answer at 20-23 (footnotes and citations omitted).) Indeed, a review of the records submitted to BLM demonstrate that the connection between the companies here involves more than just one director or officer.

With respect to the 39 companies involved in the August 28 decision, BLM obtained for the record copies of the annual reports filed with the Secretary of State, State of Idaho, listing corporate officers and directors. As noted, H.F. Magnuson, R.M. MacPhee, H. James Magnuson, Thomas R. Magnuson, Wray Featherstone, and Dale Lavigne act as directors and officers in many of these companies. In all but seven of the companies, combinations of these individuals form a majority of the board (more than 50 percent of the directors) for that company. And each of those 32 companies can be matched to another company with the same individuals in control. The annual reports also reflect that H.F. Magnuson and R.M. MacPhee are officers of many of these companies. In 27 of the 39 companies, H.F. Magnuson and R.M. MacPhee are the only officers. They are two of the three officers in two companies and MacPhee is the only officer in one company. Of the seven companies who do not have a majority of directors from the list of six in common, two have a majority of officers from the list of six in common with at least one other company. Of the nine companies who do not have a majority of officers from the list of six in common, four have a majority of directors from the list of six in common with at least one other company. Thus, from analyzing the list of 6, 34 of the companies are found to be related on the basis of either common directors or officers in the majority. And in each instance, the company can be matched to another company where the total number of mining claims held by the 2 exceeds 10.

The last 5 companies are not as easily analyzed as the preceding 34 because the list of 6 is not applicable. However, the first pair of companies, Sentinel Silver Mines and Silver Fortune Mines, each holding 10 mining claims, cannot escape the related test as they are comprised of the same board and officers. The second pair, Idaho Willow Creek Mining Company, holding 10 claims, and Reindeer-Queen Mining Company, holding 7 claims, are deemed related based on the presence of H.F. Magnuson and C.A. Tilford in both companies. Magnuson and Tilford, as two of the three directors, comprise a majority in control in Idaho Willow Creek Mining while they are the only two officers in Reindeer-Queen Mining. The remaining company under review, Silver Verde May Mining Company, holding 6 claims, is deemed related to Gold Run Gulch Mines, a company holding 7 claims. William Zanetti and R.M. MacPhee are the only two officers in Silver Verde May Mining and are both directors in Gold Run Gulch Mines.

The 2 companies involved in the September 16 decision, both holding 10 mining claims, must be deemed related as they share 3 of their respective 4 directors and 2 officers (2 of 2 for 1 company and 2 of 3 for the other). Likewise, the 4 companies involved in the October 15 decision, all holding 10 claims each, may be easily identified as related. All four have H.F. Magnuson as their president and R.M. MacPhee as a secretary (the only officers except in one company where they are two of the three officers). Two of the companies share the same board and a majority of the directors of the third company constitutes a majority of the directors in several other companies.

We further note that several of the 45 companies share directors or officers in common with the 9 companies paying maintenance fees and identified by the Idaho State Office when it charted the 50 companies sharing the

common mailing address. Most of the directors and officers in common come from the list of six analyzed above. As these 9 companies paid maintenance fees because they all held more than 10 mining claims, any demonstration of relatedness to these companies is fatal to those seeking waiver.

We must find from the record before us that BLM correctly determined that all 45 companies were related, as that term is defined by statute and regulation, to at least 1 other company. In each instance, no less than 50 percent of the company's directors or officers were found to comprise no less than 50 percent of another company's directors or officers. This situation resulted in related companies holding in aggregate more than 10 mining claims. Consequently, each of the companies in question could not qualify for a waiver of the maintenance fee payment.

Even in light of all the evidence showing the power to exercise control to be coexistent in the companies at issue, appellants reprove the definition of control as applied by the Department because they deem the application thereof to be unconstitutional. We have often observed that this Board has no authority to declare an act of Congress or even a duly promulgated regulation unconstitutional. See Jerry L. Fabrizio, 138 IBLA 116 (1997); Chester Wittwer, 136 IBLA 96, 100 (1996). Thus, the Board is not an appropriate forum to consider the constitutionality of Federal legislation. See Idaho Mining & Development Co., 132 IBLA 29, 33 (1995); Amerada Hess Corp., 128 IBLA 94, 98 (1993), and cases cited. Rather, it is our duty here to apply the governing statutes and any duly-promulgated regulations.

Where a mining claimant fails to qualify for a small miner waiver from the maintenance fee requirement, failure to pay fees in accordance with the statute and regulations results in forfeiture. Howard J. Hunt, 147 IBLA 381, 384 (1999); Paul W. Tobeler, 131 IBLA 245, 249 (1994). Even where extenuating circumstances are asserted, BLM is without authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences. Id. In the absence of the maintenance fee or waiver, BLM properly declared the claims forfeited and void. E.C. Yegen, 145 IBLA 300 (1998); Harlow Corp., 135 IBLA 382 (1996).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions appealed from are affirmed.

James L. Byrnes
Chief Administrative Judge

I concur:

James F. Roberts
Administrative Judge

TABLE I
COMMON DIRECTORS AND OFFICERS

COMPANY NAME	DIRECTORS					OFFICERS		
	R.M. MacPhee	H.F. Magnuson	H. James Magnuson	Thomas R. Magnuson	Way Featherstone	Dale Lavigne	Wm. Zanetti	Win. Zanetti
39 Companies with Waiver Certifications Rejected in BLM's August 28, 1998 Decision								
Black Bear	X	X			X			Pres.
Boulder Creek	X	X				X		
Burke	X	X	X			X		
CDA Crescent	X	X			X			
CDA Premier	X	X	X			X		
Constitution	X	X						Pres.
Crescent Gold	X	X	X			X		Vice Pres.
Creighton	X	X	X					Sec.
E. CDA Silver	X	X	X			X		Pres.
Flygodo	X	X				X		Pres.
Gem State	X	X	X					Pres.
Gold Run Gulch	X	X					X	
Granada	X	X						Pres.
Highland	X	X				X		Sec.
Highland	X	X						Sec.
Hunter	X	X	X					Pres.

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99-5TABLE I
COMMON DIRECTORS AND OFFICERS

COMPANY NAME	DIRECTORS					OFFICERS		
	R.M. MacPhee	H.F. Magnuson	H. James Magnuson	Thomas R. Magnuson	Way Featherstone	Dale Lavigne	Wm. Zanetti	Win. Zanetti
4 Companies with Waiver Certifications Rejected in BLM's October 15, 1998 Decision								
Hypoback	X	X				X		
Idaho Willow Creek	X	X					X	Pres.
Keston Silver	X	X		X				
Lake Gulch	X	X				X		
Midas Gold	X	X	X					
Moon Gulch	X	X	X					
Mullan Metals	X	X			X			
Nat'l Silver Lead	X	X	X			X		
Park Copper-Gold	X	X				X		
Pioneer	X	X	X					
Pinnacle	X	X	X			X		
Reindeer-Queen	X	X						Pres.
Sentinel Silver	X	X						Sec.
Silver Belt	X	X	X			X		Pres.

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TABLE I
COMMON DIRECTORS AND OFFICERS

COMPANY NAME	DIRECTORS					OFFICERS		
	R.M. MacPhee	H.F. Magnuson	H. James Magnuson	Thomas R. Magnuson	Way Featherstone	Dale Lavigne	Wm. Zanetti	Win. Zanetti
2 Companies with Waiver Certifications Rejected in BLM's September 16, 1998 Decision								
Silver Eagle	X	X						
Silver Fortune	X	X						
Silver Ridge	X	X						
Silver Verde	X	X						Pres.
South Atlas	X	X				X		
South Butte	X	X						
Square Deal	X	X						
Stevens Peak	X	X	X		X			Pres.
Superior	X	X						
Toledo	X	X						
Western Silver-Lead	X	X	X		X	X		
9 Companies that Paid Maintenance Fees For All Claims Each Assessment Year								
Capital Silver	X	X	X	X				Pres.
ID-MT Silver	X	X	X	X				Sec.

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TABLE I
COMMON DIRECTORS AND OFFICERS

COMPANY NAME	DIRECTORS					OFFICERS		
	R.M. MacPhee	H.F. Magnuson	H. James Magnuson	Thomas R. Magnuson	Way Featherstone	Dale Lavigne	Wm. Zanetti	Win. Zanetti
4 Companies with Waiver Certifications Rejected in BLM's October 15, 1998 Decision								
May Ann Mining	X	X	X	X				
Slows Silver	X	X	X	X				
Evergreen Minerals	X	X						Pres.
Amazon-Debie	X	X				X		Pres.
9 Companies that Paid Maintenance Fees For All Claims Each Assessment Year								
Abenden	X	X			X			Pres.
Alice	X	X			X			
Evolution	X	X				X		Pres.
Gadorda	X	X			X			
Metropolitan	X	X	X		X			Pres.
Placer Creek	X	X	X			X		Pres.
Rock Creek	X	X		X		X		Pres.
Silver Buckle	X	X			X			Pres.
Vindicator	X	X	X	X		X		Pres.

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